

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
STARR SURPLUS LINES INSURANCE
COMPANY,

Plaintiff,

-against-

BAR BAKERS, LLC,

Defendant.

BAR BAKERS, LLC,

Counterclaim-Plaintiff,

-against-

STARR SURPLUS LINES INSURANCE
COMPANY,

Counterclaim-Defendant.

BAR BAKERS, LLC,

Third-Party Plaintiff,

-against-

BERKLEY ASSURANCE COMPANY and
INSURGENT BRANDS, LLC,

Third-Party Defendants.

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19 Civ. 9136 (AT)

ORDER

ANALISA TORRES, District Judge:

Plaintiff Starr Surplus Lines Insurance Company (“Starr”) commenced this action on October 2, 2019 against Defendant Bar Bakers, LLC (“Bar Bakers”). On November 18, 2019, Bar Bakers filed its Answer, Counterclaim, and Third-Party Complaint. *See* ECF Nos. 19, 21. By letter dated November 18, 2019, Bar Bakers raised a potential issue regarding whether the Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a), based on a possible lack of complete diversity of citizenship between the parties because “Gary Jacobs is a member of Bar Backers and is a resident of


the State of New York.” ECF No. 20.

Starr responded on November 21, 2019, and indicated that Gary Jacobs is not listed as a member of Bar Bakers in any of their public filings and is not listed as an owner on Bar Bakers’ website. ECF No. 22 at 1–2. Further, Starr argues that even if Jacobs were a member of Bar Bakers, “whether ‘diversity jurisdiction exists is determined by examining the citizenship of the parties at the time the action commenced’ and an ‘individual’s citizenship is determined by his or her domicile.’” *Id.* at 2 (quoting *Hai Yang Liu v. 88 Harborview Realty, LLC*, 5 F. Supp. 3d 443, 446 (S.D.N.Y. 2014)). Although Bar Bakers contends that Jacobs is a resident of New York, they have not alleged that he is domiciled in New York, and “[a]n allegation of residence only is legally insufficient.” *McElroy v. Gemark Alloy Refining Corp.*, 592 F. Supp. 2d 508, 510 n.1 (S.D.N.Y. 2008). The Court is not persuaded by Bar Bakers’ arguments that complete diversity of citizenship may be lacking.

In order to resolve this issue prior to the initial pretrial conference, it is hereby ORDERED that the initial pretrial conference scheduled for December 3, 2019 is ADJOURNED to **December 18, 2019 at 11:40 a.m.** By **December 4, 2019**, Bar Bakers shall submit any evidence to support its claims that Jacobs is domiciled in New York. By **December 11, 2019**, Starr shall file a response.

SO ORDERED.

Dated: November 26, 2019
New York, New York



ANALISA TORRES
United States District Judge